

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

United States of America

vs.

Carlos Demond Robinson,

Defendant.

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Cr. No. 6:03-616

**OPINION & ORDER**

This matter is before the court on Carlos Demond Robinson's ("Robinson") motion for a new trial on the basis of newly-discovered evidence pursuant to Rule 33 of the Federal Rules of Criminal Procedure.

A motion pursuant to Rule 33 of the Federal Rules of Criminal Procedure for a new trial on the basis of newly-discovered evidence "must be filed within 3 years after the verdict or finding of guilty." Fed. R. Crim. P. 33(b)(1). However, "[i]f an appeal is pending, the court may not grant a motion for a new trial until the appellate court remands the case." Id. Robinson appealed his conviction and sentence on December 28, 2004, and his case is currently pending before the United States Court of Appeals for the Fourth Circuit. Therefore, Robinson's motion for a new trial is untimely.

It is therefore

**ORDERED** that Robinson's motion for a new trial is dismissed without prejudice.

**IT IS SO ORDERED.**

s/Henry M. Herlong, Jr.  
United States District Judge

Greenville, South Carolina  
October 25, 2006

**NOTICE OF RIGHT TO APPEAL**

Defendant is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.